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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,075	07/22/2003	Jacob Safdeye	K19-022	9450
7590 11/02/2004				
R. Neil Sudol 714 Colorado Avenue Bridgeport, CT 06605-1601			EXAMINER STASHICK, ANTHONY D	
			ART UNIT 3728	PAPER NUMBER
DATE MAILED: 11/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/625,075

Applicant(s)

SAFDEYE, JACOB

Examiner

Anthony Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10272003</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1-3, 5, 6 and 8-22 rejected under 35 U.S.C. 102(e) as being anticipated by Phillips 6,769,204. Phillips '204 discloses all the limitations of the claims including the following: a sole 12; an upper 34, 50 made substantially of a non-woven fleece material; at least one element 56 provided with a hooked or barbed backing material (col. 4, lines 33-34) for releasably fastening, via a hook and loop coupling, the ornamental element to the upper at any of a multiplicity of positions; the non-woven fleece material forms at least an outer layer of the upper (see Figure 2); the upper is formed in major part of a single layer of material 50, the outer layer being a single layer, the non-woven fleece material constituting the single layer 50; the ornamental element is made in part of flexible material 50, 34; the backing material of the ornamental element being connected to the flexible material along one side thereof (see Figures 2-3); the ornamental element includes a design (stars, saying) taken from a logo (see Figure 3); the upper and the sole form an athletic shoe (sandal used by swimmers or divers before getting into the pool, therefore athletic shoe); the upper is provided with a plurality of markings (loops of loop fleeced material)

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defining attachment locations for the ornamental elements; the ornamental element is one of a plurality of ornamental elements each provided with a hooked or barbed backing material for releasably fastening, via hook and loop coupling, the respective ornamental element to the upper at any of a multiplicity of positions (see Figures 2 and 3). With respect to the method claims 16-22, the use of Phillips '204 as disclosed would meet the limitations of these claims.

3. Claims 1-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Kellin et al. 5,136,726. Kellin et al. '726 discloses all the limitations of the claims including the following: a sole (bottom of shoe in Figure 1); an upper (covering for foot in Figure 1) made substantially of a non-woven fleece material 19; at least one element 14 provided with a hooked or barbed backing material for releasably fastening, via a hook and loop, coupling the ornamental element to the upper at any of a multiplicity of positions (see Figure 5); the non-woven fleece material 19 forms at least an outer layer of the upper (see Figure 3); the upper is formed in major part of a single layer of material (see Figure 3), the outer layer being a single layer, the non-woven fleece material constituting the single layer (see Figure 3); the upper has a heel section, a metatarsal region, a first side panel and a second side panel all formed in substantial part by the non-woven fleece material (see Figure 1); the ornamental element is made in part of flexible material 22; the backing material of the ornamental element being connected to the flexible material along one side thereof (see Figure 5); the flexible material is a fabric material (see col. 3, lines 47-63); the upper has a heel section, a metatarsal region, a first side panel and a second side panel each formed in substantial part at least along an outer surface by the non-woven fleece material (see Figures 1 and 3); the ornamental element includes a design (star, heart) taken from a logo; the upper and the sole form an athletic shoe (shoe can be used in athletic activity, therefore

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considered an athletic shoe); the upper is provided with a plurality of markings (loops) defining attachment locations for the ornamental elements; the ornamental element is one of a plurality of ornamental elements each provided with a hooked or barbed backing material for releasably fastening, via hook and loop coupling, the respective ornamental element to the upper at any of a multiplicity of positions (see Figures 1 and 4). With respect to the method claims 16-22, the use of Kellin et al. '726 as disclosed would meet the limitations of these claims.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and cited on form 892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is (703) 308-3876. The examiner can normally be reached on Monday through Thursday from 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Anthony Stashick". The signature is fluid and cursive, with the first name "Anthony" and last name "Stashick" clearly distinguishable.

Anthony Stashick
Primary Examiner
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ADS